IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of Case

A.O.No.487 of 2003

Date of decision:- 1st March, 2006

A.F.R. (Approved for Reporting)
~~Not Approved for Reporting~~

Date:- 1st March 2006. Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 487 of 2003

Km. Sapna, minor
D/o Sri Trilok Singh
through guardian Sri Trilok Singh
S/o Sri Avtar Singh,
R/o Village Nadda,
Tehsil Kotdwar,
District Pauri Garhwal ……Appellant-Claimant

Versus

1. United India Insurance Company Ltd.
through its Regional Manager,
Regional Officer, Ranipur Turn,
Haridwar.

2. Chaman Singh
S/o Sri Kalyan Singh,
R/o Village Sarda,
P.O. Dugadda
District Pauri Garhwal …..Respondents-Opp.Parties

……

Mr. Sudhir Kumar, Advocate for the appellant.
Mr. D.S. Patni, Advocate for respondent no. 1.
None for respondent no. 2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C. J.
Hon. M.M. Ghildiyal, J.

Rajeev Gupta,C.J. (Oral)

Mr. Sudhir Kumar, Advocate for the appellant.

Mr. D.S.Patni, Advocate for respondent no.1

None for respondent no. 2.

They are heard.

2. This is claimant's appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal/District Judge, Pauri

Garhwal vide Award dated 01.10.2003 passed in Motor Accident Claim Petition No. 8 of 2000.

3. The claimant Km. Sapna, an unfortunate minor girl, aged about 12 years who suffered permanent disability to the extent of 90% in her left leg in the motor accident in the year 1999 claimed compensation of Rs.6,45,000/-

4. The accident occurred on 03.09.1999 when claimant Km. Sapna was on her way to a temple in her village and offending vehicle-jeep bearing registration no. UP-31A-2992 came at an excessive speed and dashed her as a result of which she was dragged for a distance of about 15-20 feet. The claimant suffered multiple injuries in the accident including compound fracture of her left knee exposing the bones of her left leg. At the time of the accident Sapna was student of IVth standard and on account of the injuries she could not continue with her studies.

5. The owner and insurer of the offending vehicle jeep contested the claim and denied the accident itself. The Insurance Company took the further plea that the jeep was being plied in breach of policy conditions and the drive of the jeep was not holding a valid driving license.

6. The Tribunal on the evidence of APW-1 Km. Sapna, APW-2 Km.Asha, APW-3 Trilok Singh and APW-4 Dr. Khagendra Singh held that the claimant Km. Sapna sustained multiple injuries in the accident; she suffered permanent disability in her left leg to the extent of 90% on account of the injuries sustained by her in the accident; the accident occurred due to rash and negligent driving of the driver of the offending vehicle-jeep and the insurer of the jeep was liable to pay compensation to the claimant. Considering the extent of the permanent disability suffered by the claimant in the accident and the evidence led about the medical expenses, the Tribunal awarded a sum of Rs. 15,069/- towards medical expenses; Rs. 2,500/- for transportation, attendant and special diet and Rs. 65,000/- towards permanent disability. Thus, a total sum of

Rs. 82, 569/- with interest @ 8% per annum from the date of the application was awarded to the claimant for the injuries suffered by her in the accident.

7. Mr. Sudhir Kumar, learned counsel for the appellant, placing reliance on the dicta of the Apex Court in the case of R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd. and others reported in 1995 ACJ 366, Ashwani Kumar Mishra Vs. P. Muniam Babu and others reported in 1999 ACJ 1105 and Divisional Controller, KSRTC Vs. Mahadeva Shetty and another reported in (2003) 7 SCC 197 contended that the Tribunal has erred in awarding low compensation of Rs. 82,569/- only as against the sum of Rs. 6,45,000/- claimed by the claimant.

9. Sri D.S.Patni, learned counsel for the first respondent- United India Insurance company Ltd., on the other hand, supported the Award and contended that the amount awarded by the Tribunal is just and proper in the facts and circumstances of the case as admittedly the claimant Sapna was not an earning member at the time of the accident.

10. The finding recorded by the Tribunal that the claimant Km.Sapna suffered injuries in the accident; the injuries resulted in permanent disability to the extent of 90% in her left leg and that the accident occurred due to rash and negligent driving of the driver of the offending vehicle- jeep have now attained finality as none of the respondents have filed any appeal against the Award.

11. Claimant Sapna was 12 years of age at the time of the accident and was pursuing her studies in IVth standard. It is established from record that she suffered injuries in the accident including multiple fractures of her left leg. The Tribunal has found that she suffered permanent disability to the extent of 90% in her left leg.

12. True, Km. Sapna was not earning member at the time of the accident but the permanent disability suffered by her is bound to affect

her matrimonial prospects adversely. It would also adversely affect the prospects of her getting a job in future.

13. The amount of compensation of Rs. 82,569/- awarded by the Tribunal when examined in the above context is certainly on the lower side. Though the Tribunal has refereed to the likely adverse affect on the matrimonial prospects of the claimant on account of the permanent disability in her left leg, but due weight does not appear to have been given to the said aspect while assessing the compensation in the case.

14. Considering the age of the claimant Km. Sapna at the time for the accident; the nature of the injuries and the fractures suffered by her in the accident; the extent of permanent disability suffered by her in left leg on account of the injuries sustained in the accident; the amount of physical pain and mental suffering she must have suffered during the period she remained hospitalised and her left leg was under plaster; the fact that the permanent disability to the extent of 90% in her left leg is bound to affect adversely her matrimonial prospects and that for rest of her life she would remain crippled and in view of the guidelines laid down by the Apex Court in the above quoted dicta, we are of the opinion that a lump sum of Rs. 2,00,000/-(Rupees Two Lakhs only) would be just and proper compensation to the claimant for the injuries suffered by her in the accident, the amount spent on treatment, physical pain and mental suffering, loss of future earning capacity and other permissible heads.

15. For the foregoing reasons, the appeal filed by the claimant under Section 173 of the Motor Vehicles Act is allowed in part and the compensation of Rs. 82,569/- (Rupees Eighty Two Thousand Five Hundred Sixty Nine only) awarded by the Tribunal is enhanced to Rs.2,00,000/- (Rupees Two Lakhs only). The enhanced amount of compensation shall carry interest @ 6% per annum from the date of the application. No order as to costs.

(M.M.Ghildiyal , J.) **(Rajeev Gupta, C.J.)**

01.03.2006

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